

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

COMPANY APPLICATION No 333 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
 2. To be referred to the Reporter or not? : YES
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

I.I.B.I. LTD.

Versus

O.L.OF RUSTOM MILLS & INDUSTRIES LTD.

Appearance:

1. COMPANY APPLICATION No. 333 of 2001
MR AC GANDHI for Petitioner No. 1
OFFICIAL LIQUIDATOR for Respondent No. 1
NOTICE SERVED for Respondents No. 2-3
SINGHI & CO for Respondent No. 4
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CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 10/12/2001

ORAL JUDGEMENT

1. Heard ld. counsel Mr. A.C.Gandhi for the applicant and ld. counsel Mr.Vyapak Desai for ICICI.

2. This Judge's Summons has been taken out by the Applicant- Industrial Investment Bank of India praying that the applicant Bank may be permitted to file Recovery Application under Section 40 of the Industrial Reconstruction Bank of India Act, 1984 (Act No.62 of 1984) (hereinafter referred to as the "Act") in this Court against the respondent No.1 Company and to proceed to recover from the said Company an amount of Rs. 2,03,83,710-00 by way of sale of the property of the company mortgaged with the applicant Bank being the outstanding amount of the Term Loan of Rs. 46 Lakh as per the particulars stated in the copy of the proposed application under Sec.40 of the Act at Annex.A to this application.

2. I have considered the contents of the affidavit filed in support of the Judge's Summons and the nature of the prayer advanced in the memo of the Application Annex.A to this application.

3. Ld. counsel Mr. AC Gandhi for the applicant Bank has rightly submitted that as per the decision of the Apex Court in the case of Allahabad Bank v/s Canara Bank & Another, reported in AIR 2000 SC 1535, no formal permission would be required under Section 446 of the Companies Act, 1956 and applicant Bank could have initiated proceedings under Section 40 of the Act, but by way of abundant caution, present application is filed for obtaining permission. I would like to quote the observations made by the Apex Court in the case of Allahabad Bank (supra) :-

Special law v. General law

"38. It the same time, some High Courts have already held that the Companies Act is a general Act and does not prevail under the RDB Act. They have relied upon Union of India v. India Fisheries (1965) 3 SCR 679 : (AIR 1966 SC 35).

39. There can be a situation in law where the same statute is treated as a special statute vis-a-vis one legislation and again as a general statute vis-a-vis yet another legislation. Such situations do arise as held in Life Insurance Corporation of India v. D.J. Bahadur, AIR 1980 SC 2181 : (1980 Lab IC 1218). It was there observed:

"for certain cases, an Act may be general and for certain other purposes, it may be special and the Court cannot blur a distinction when dealing with finer points of law."

For example, a Rent Control Act may be a

special statute as compared to the Code of Civil Procedure, but vis-a-vis an Act permitting eviction from public premises or some special class of buildings, the Rent Control Act may be a general statute. In fact in *Damji Valji Shah v. Life Insurance Corporation of India* (1965)3 SCR 665 : (AIR 1965 SC 135 already referred to), this Court has observed that vis-a-vis the LIC Act, 1956, the Companies Act, 1956 can be treated as a general statute. This is clear from para 19 of that judgment. It was observed :

"Further, the provisions of the Special Act i.e. LIC Act, will override the provisions of the general Act, viz. the Companies Act which is an Act relating to companies in general."

Thus, some High Courts rightly treated the Companies Act as a general statute, and the RDB Act as a special statute overriding the general statute.

Special law versus Special law

40. Alternatively, the Companies Act, 1956 and the RDB Act can both be treated as special laws, and the principle that when there are two special laws, the latter will normally prevail over the former if there is a provision in the latter special Act giving it overriding effect, can also be applied. Such a provision is there in the RDB Act, namely section 34. A similar situation arose in *Maharashtra Tubes Ltd. v. State Industrial and Investment Corporation of India* (1993) 2 SCC 144 : (1993 AIR SCW 881) where there was inconsistency between two special laws, the Finance Corporation Act, 1951 and the Sick Industries Companies (Special Provisions) Act, 1985. The latter contained Section 32 which gave overriding effect to its provisions and was held to prevail over the former. It was pointed out by Ahmadi, J that both special statutes contained non-obstante clauses but that the "1985 Act being a subsequent enactment, the non-obstante clause therein would ordinarily prevail over the non-obstante clause in section 46-B of the 1951 Act unless it is found that the 1985 Act is a general statute and the 1951 statute is a special one." Therefore, in view of section 34 of the RDB Act, the said Act overrides the Companies Act, to the extent there is

anything inconsistent between the Acts."

4. I accept the say of ld. counsel Mr. Gandhi for the applicant Bank that in view of the ratio propounded by the Apex Court in the case of Allahabad Bank (supra), no formal permission under Section 446 of the Companies Act, 1956 would be required for initiating proceedings under Sec.40 of the Act and applicant Bank could have initiated such proceedings without filing this application. Under the circumstances, I am inclined to grant formal permission as prayed for in this application.

5. In the result, this application is allowed. The applicant- Industrial Investment Bank of India is permitted to file Recovery Application under Section 40 of the Industrial Reconstruction Bank of India Act, 1984 (Act No.62 of 1984) in this Court against the respondent No.1 Company and to proceed to recover from the said Company an amount of Rs. 2,03,83,710-00 by way of sale of the property of the company mortgaged with the applicant Bank being the outstanding amount of the Term Loan of Rs. 46 Lakh as per the particulars stated in the copy of the proposed application under Sec.40 of the Act at Annex.A to this application. No costs.

10.12.2001 [C.K. BUCH, J]

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